

[§ 3407. Repealed. Pub. L. 104-66, title III, § 3001(a)(1), Dec. 21, 1995, 109 Stat. 733]

Section, added Pub. L. 95-437, §3(a), Oct. 10, 1978, 92 Stat. 1058, §3397; renumbered §3407 and amended Pub. L. 95-454, title IX, §906(c)(1)(B), (2)(D), (E), Oct. 13, 1978, 92 Stat. 1226, 1227, related to reports.

§ 3408. Employee organization representation

If an employee organization has been accorded exclusive recognition with respect to a unit within an agency, then the employee organization shall be entitled to represent all employees within that unit employed on a part-time career employment basis.

(Added Pub. L. 95-437, §3(a), Oct. 10, 1978, 92 Stat. 1058, §3398; renumbered §3408, Pub. L. 95-454, title IX, §906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.)

AMENDMENTS

1978—Pub. L. 95-454 renumbered section 3398 of this title as this section.

CHAPTER 35—RETENTION PREFERENCE, RESTORATION, AND REEMPLOYMENT

SUBCHAPTER I—RETENTION PREFERENCE

Sec.	
3501.	Definitions; application.
3502.	Order of retention.
3503.	Transfer of functions.
3504.	Preference eligibles; retention; physical qualifications; waiver.

[SUBCHAPTER II—REPEALED]

[3551. Repealed.]

SUBCHAPTER III—REINSTATEMENT OR RESTORATION AFTER SUSPENSION OR REMOVAL FOR NATIONAL SECURITY

3571. Reinstatement or restoration; individuals suspended or removed for national security.

SUBCHAPTER IV—REEMPLOYMENT AFTER SERVICE WITH AN INTERNATIONAL ORGANIZATION

3581.	Definitions.
3582.	Rights of transferring employees.
3583.	Computations.
3584.	Regulations.

SUBCHAPTER V—REMOVAL, REINSTATEMENT, AND GUARANTEED PLACEMENT IN THE SENIOR EXECUTIVE SERVICE

3591.	Definitions.
3592.	Removal from the Senior Executive Service.
3593.	Reinstatement in the Senior Executive Service.
3594.	Guaranteed placement in other personnel systems.
3595.	Reduction in force in the Senior Executive Service.
3595a.	Furlough in the Senior Executive Service.
3596.	Regulations.

SUBCHAPTER VI—REEMPLOYMENT FOLLOWING LIMITED APPOINTMENT IN THE FOREIGN SERVICE

3597. Reemployment following limited appointment in the Foreign Service.

AMENDMENTS

1994—Pub. L. 103-353, §2(b)(2)(C), Oct. 13, 1994, 108 Stat. 3169, struck out item for subchapter II “RESTORATION AFTER ACTIVE DUTY OR TRAINING DUTY” and item 3551 “Restoration; Reserves and National Guardsmen”.

1984—Pub. L. 98-615, title III, §306(c)(2), Nov. 8, 1984, 98 Stat. 3220, added item 3595a.

1981—Pub. L. 97-35, title XVII, §1704(a)(2), Aug. 13, 1981, 95 Stat. 757, redesignated item 3595 as 3596, and added item 3595.

1980—Pub. L. 96-465, title II, §2301(b), Oct. 17, 1980, 94 Stat. 2164, added item for subchapter VI and item 3597.

1978—Pub. L. 95-454, title IV, §404(c), Oct. 13, 1978, 92 Stat. 1167, added item for subchapter V and items 3591 to 3595.

SUBCHAPTER I—RETENTION PREFERENCE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 22 sections 3964, 4010a; title 31 section 732; title 42 section 237.

§ 3501. Definitions; application

(a) For the purpose of this subchapter, except section 3504—

(1) “active service” has the meaning given it by section 101 of title 37;

(2) “a retired member of a uniformed service” means a member or former member of a uniformed service who is entitled, under statute, to retired, retirement, or retainer pay on account of his service as such a member; and

(3) a preference eligible employee who is a retired member of a uniformed service is considered a preference eligible only if—

(A) his retirement was based on disability—

(i) resulting from injury or disease received in line of duty as a direct result of armed conflict; or

(ii) caused by an instrumentality of war and incurred in the line of duty during a period of war as defined by sections 101 and 1101 of title 38;

(B) his service does not include twenty or more years of full-time active service, regardless of when performed but not including period of active duty for training; or

(C) on November 30, 1964, he was employed in a position to which this subchapter applies and thereafter he continued to be so employed without a break in service of more than 30 days.

(b) Except as otherwise provided by this subsection and section 3504 of this title, this subchapter applies to each employee in or under an Executive agency. This subchapter does not apply to an employee whose appointment is required by Congress to be confirmed by, or made with the advice and consent of, the Senate or to a member of the Senior Executive Service or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 428; Pub. L. 94-183, §2(8), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 95-454, title IV, §404(a), Oct. 13, 1978, 92 Stat. 1165; Pub. L. 100-325, §2(e), May 30, 1988, 102 Stat. 581; Pub. L. 102-83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406.)

HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
(a)(1), (2) ...	5 U.S.C. 3101 (as applicable to 5 U.S.C. 861).	Aug. 19, 1964, Pub. L. 88-448, §101 (as applicable to §202), 78 Stat. 484.

HISTORICAL AND REVISION NOTES—CONTINUED

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)(3)	5 U.S.C. 861(b).	June 27, 1944, ch. 287, § 12(b); added Aug. 19, 1964, Pub. L. 88-448, § 202(4) (“(b)”), 78 Stat. 486.

In subsection (a), the definitions of “uniformed services” and “armed forces” are omitted as unnecessary in view of the definitions in section 2101. The definition of “civilian office” is omitted as unnecessary as subsection (b) of this section states the application of this subchapter.

In subsection (a)(3), the words “Notwithstanding any other provision of this Act” are omitted as unnecessary. The words “preference eligible employee” are co-extensive with and substituted for “employee * * * included under section 2 of this Act” in view of the definition of preference eligible in section 2108. In paragraph (3)(C), the words “on November 30, 1964, he was employed in a position to which this subchapter applies and thereafter he continued to be so employed” are substituted for “immediately prior to the effective date of this subsection, he was employed in a civilian office to which this Act applies and, on and after such date, he continues to be employed in any such office”.

Subsection (b) is supplied on authority of sections 2, 12, and 20 of the Act of June 27, 1944, ch. 287, 58 Stat. 387, 391, which are carried into this title.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preference to the report.

AMENDMENTS

1991—Subsec. (a)(3)(A)(ii). Pub. L. 102-83 substituted reference to section 1101 of title 38 for reference to section 301 of title 38.

1988—Subsec. (b). Pub. L. 100-325 inserted reference to Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

1978—Subsec. (b). Pub. L. 95-454 inserted reference to a member of Senior Executive Service.

1975—Subsec. (b). Pub. L. 94-183 struck out “, except an employee whose appointment is made under section 3311 of title 39” after “or made with the advice and consent of, the Senate”.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95-454, see section 415 of Pub. L. 95-454, set out as an Effective Date note under section 3131 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3502, 6303 of this title; title 10 section 1586; title 22 sections 1438, 4010a.

§ 3502. Order of retention

(a) The Office of Personnel Management shall prescribe regulations for the release of competing employees in a reduction in force which give due effect to—

- (1) tenure of employment;
- (2) military preference, subject to section 3501(a)(3) of this title;
- (3) length of service; and
- (4) efficiency or performance ratings.

In computing length of service, a competing employee—

(A) who is not a retired member of a uniformed service is entitled to credit for the total length of time in active service in the armed forces;

(B) who is a retired member of a uniformed service is entitled to credit for—

- (i) the length of time in active service in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or
- (ii) the total length of time in active service in the armed forces if he is included under section 3501(a)(3)(A), (B), or (C) of this title; and

(C) is entitled to credit for—

(i) service rendered as an employee of a county committee established pursuant to section 8(b) of the Soil Conservation and Allotment Act or of a committee or association of producers described in section 10(b) of the Agricultural Adjustment Act; and

(ii) service rendered as an employee described in section 2105(c) if such employee moves or has moved, on or after January 1, 1987, without a break in service of more than 3 days, from a position in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard to a position in the Department of Defense or the Coast Guard, respectively, that is not described in section 2105(c).

(b) A preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more and whose performance has not been rated unacceptable under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other preference eligibles.

(c) An employee who is entitled to retention preference and whose performance has not been rated unacceptable under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other competing employees.

(d)(1) Except as provided under subsection (e), an employee may not be released, due to a reduction in force, unless—

(A) such employee and such employee’s exclusive representative for collective-bargaining purposes (if any) are given written notice, in conformance with the requirements of paragraph (2), at least 60 days before such employee is so released; and

(B) if the reduction in force would involve the separation of a significant number of employees, the requirements of paragraph (3) are met at least 60 days before any employee is so released.

(2) Any notice under paragraph (1)(A) shall include—

(A) the personnel action to be taken with respect to the employee involved;

(B) the effective date of the action;

(C) a description of the procedures applicable in identifying employees for release;

(D) the employee’s ranking relative to other competing employees, and how that ranking was determined; and

(E) a description of any appeal or other rights which may be available.

(3) Notice under paragraph (1)(B)—

(A) shall be given to—

(i) the appropriate State dislocated worker unit or units (referred to in section 311(b)(2) of the Job Training Partnership Act); and

(ii) the chief elected official of such unit or each of such units of local government as may be appropriate; and

(B) shall consist of written notification as to—

(i) the number of employees to be separated from service due to the reduction in force (broken down by geographic area or on such other basis as may be required under paragraph (4));

(ii) when those separations will occur; and

(iii) any other matter which might facilitate the delivery of rapid response assistance or other services under the Job Training Partnership Act.

(4) The Office shall prescribe such regulations as may be necessary to carry out this subsection. The Office shall consult with the Secretary of Labor on matters relating to the Job Training Partnership Act.

(e)(1) Subject to paragraph (3), upon request submitted under paragraph (2), the President may, in writing, shorten the period of advance notice required under subsection (d)(1)(A) and (B), with respect to a particular reduction in force, if necessary because of circumstances not reasonably foreseeable.

(2) A request to shorten notice periods shall be submitted to the President by the head of the agency involved, and shall indicate the reduction in force to which the request pertains, the number of days by which the agency head requests that the periods be shortened, and the reasons why the request is necessary.

(3) No notice period may be shortened to less than 30 days under this subsection.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 428; Pub. L. 90-367, § 3, June 29, 1968, 82 Stat. 278; Pub. L. 90-623, § 1(23), Oct. 22, 1968, 82 Stat. 1313; Pub. L. 95-454, title III, § 307(e), title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1149, 1224; Pub. L. 99-251, title III, § 306(a), Feb. 27, 1986, 100 Stat. 27; Pub. L. 101-508, title VII, § 7202(c), Nov. 5, 1990, 104 Stat. 1388-335; Pub. L. 102-484, div. D, title XLIV, § 4433(a)(1), Oct. 23, 1992, 106 Stat. 2721.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)	5 U.S.C. 861(a) (less 2d and 3d provisos), (c).	June 27, 1944, ch. 287, § 12 (less 2d and 3d provisos), 58 Stat. 390. Aug. 19, 1964, Pub. L. 88-448, § 202 (1)-(3), (4) (“(c)”), 78 Stat. 486.
(b)	5 U.S.C. 861(a) (2d proviso).	June 27, 1944, ch. 287, § 12 (2d proviso), 58 Stat. 390.

In subsection (a), the words “reduction in force” are substituted for “reduction in personnel”. The words “in any civilian service of any Federal agency” are omitted as unnecessary because of the application stated in section 3501. In the second sentence, the word “total” in the phrase “length of service” is omitted for consistency with paragraph (3), and the words “subject to subsection (c) of this section” are omitted as unnecessary in view of the supplied distinction between a competing employee who is not a retired member of a uniformed service and such an employee who is a retired member

of a uniformed service. In paragraph (A), the words “total length of time in active service” are substituted for “length of time spent in active service” for consistency with paragraph (B)(ii).

In subsections (a) and (b), the references to “performance” ratings and ratings of “satisfactory” are added on authority of former section 2005, which is carried into section 4304.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Section 8(b) of the Soil Conservation and Allotment Act, referred to in subsec. (a)(C)(i), probably means section 8(b) of the Soil Conservation and Domestic Allotment Act, which is classified to section 590h(b) of Title 16, Conservation.

Section 10(b) of the Agricultural Adjustment Act, referred to in subsec. (a)(C)(i), is classified to section 610(b) of Title 7, Agriculture.

The Job Training Partnership Act, referred to in subsec. (d)(3), (4), is Pub. L. 97-300, Oct. 13, 1982, 96 Stat. 1322, as amended, which is classified generally to chapter 19 (§ 1501 et seq.) of Title 29, Labor. Section 311(b)(2) of the Act is classified to section 1661(b)(2) of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 29 and Tables.

AMENDMENTS

1992—Subsecs. (d), (e). Pub. L. 102-484 added subsecs. (d) and (e).

1990—Subsec. (a)(C). Pub. L. 101-508 amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “is entitled to credit for service rendered as an employee of a county committee established pursuant to section 590h(b) of title 16, or of a committee or an association of producers described in section 610(b) of title 7.”

1986—Subsec. (a)(C). Pub. L. 99-251 struck out “who is an employee in or under the Department of Agriculture” before “is entitled to credit”.

1978—Subsec. (a). Pub. L. 95-454, § 906(a)(2), substituted “Office of Personnel Management” for “Civil Service Commission”.

Subsec. (b). Pub. L. 95-454, § 307(e), substituted provisions relating to retention of a preference eligible with a compensable service-connected disability of 30 percent or more, for provisions relating to retention of preference eligible employees on the basis of ratings.

Subsec. (c). Pub. L. 95-454, § 307(e), added subsec. (c).
1968—Subsec. (a). Pub. L. 90-623 made minor changes in form and punctuation in subpars. (A) and (B), and, in subpar. (C), substituted “section 590h(b) of title 16” and “section 610(b) of title 7” for “section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b))” and “section 10(b) of the Agricultural Adjustment Act of May 12, 1933 (48 Stat. 37)” respectively.

Subsec. (a)(C). Pub. L. 90-367 added subsec. (a)(C).

EFFECTIVE DATE OF 1992 AMENDMENT

Section 4433(a)(2) of Pub. L. 102-484 provided that: “The amendment made by paragraph (1) [amending this section] shall apply with respect to any personnel action taking effect on or after the last day of the 90-day period beginning on the date of enactment of this Act [Oct. 23, 1992].”

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable with respect to any individual who, on or after Jan. 1, 1987, moves from employment in nonappropriated fund instrumentality of Department of Defense or Coast Guard, that is described in section 2105(c) of this title, to employment in Department or Coast Guard, that is not described in section 2105(c), or who moves from employment in Department or Coast Guard, that is not described in section 2105(c), to employment in nonap-

propriated fund instrumentality of Department or Coast Guard, that is described in section 2105(c), see section 7202(m)(1) of Pub. L. 101-508, set out as a note under section 2105 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90-623, set out as a note under section 5334 of this title.

INTERAGENCY PLACEMENT PROGRAM FOR FEDERAL EMPLOYEES AFFECTED BY REDUCTIONS IN FORCE

Pub. L. 103-337, div. A, title X, §1066, Oct. 5, 1994, 108 Stat. 2850, provided that:

“(a) STUDY AND REPORT.—(1) The Director of the Office of Personnel Management shall conduct a study on the feasibility of establishing a mandatory interagency placement program for Federal employees affected by reductions in force.

“(2) For purposes of paragraph (1), an interagency placement program is a program that provides a system to require the offering of a position in an agency to an employee of another agency affected by a reduction in force if—

“(A) the position cannot be filled through a placement program of the agency in which the position is located;

“(B) the employee to whom the offer is made is qualified for the offered position; and

“(C) the geographic location of the offered position is within the commuting area of—

“(i) the residence of the employee; or

“(ii) the employee's present or last-held position.

“(3) The Director shall carry out this subsection in consultation with the Secretary of Defense.

“(4) The Director shall seek comments from the heads of all appropriate Federal agencies in conducting the study required by paragraph (1).

“(5) Not later than six months after the date of the enactment of this Act [Oct. 5, 1994], the Director shall submit to Congress a report on the results of the study required by paragraph (1) and on any action taken by the Director under subsection (b).

“(b) AGREEMENTS TO ESTABLISH INTERAGENCY PLACEMENT PROGRAM.—(1) The Director may establish a Government-wide interagency placement program for Federal employees affected by reductions in force if, during the 6-month period beginning on the date of the enactment of this Act [Oct. 5, 1994], the Director, in consultation with the Secretary of Defense, determines that such a program is feasible. To carry out the program, the Director may enter into an agreement with the head of each agency that agrees to participate in the program. If the Director establishes a program under this subsection, it is not necessary that the program be an interagency placement program within the meaning of subsection (a)(2).

“(2) If the Director establishes a program pursuant to paragraph (1), the report required by subsection (a)(5) shall identify each agency that does not agree to participate in the program and the reasons of the head of that agency for not agreeing to participate.

“(c) DEFINITIONS.—For purposes of this section:

“(1) The term ‘agency’ means an Executive agency as defined in section 105 of title 5, United States Code, except that such term does not include the General Accounting Office.

“(2) The term ‘Federal employees affected by reductions in force’ means Federal employees who are separated, or are scheduled to be separated, from service under a reduction in force pursuant to—

“(A) regulations prescribed under section 3502 of title 5, United States Code; or

“(B) procedures established under section 3595 of such title.”

SPECIAL RULE ON APPLICATION OF SUBSECTIONS (d) AND (e)

Section 4433(b) of Pub. L. 102-484, as amended by Pub. L. 103-337, div. A, title III, §341(a), Oct. 5, 1994, 108 Stat. 2720, provided that:

“(1) The provisions of section 3502(d) and (e) of title 5, United States Code (as added by subsection (a)) shall apply to employees of the Department of Defense according to their terms, except that, with respect to any reduction in force within that agency that would involve the separation of a significant number of employees (as determined under paragraph (1)(B) of such section 3502(d)), any reference in such section 3502(d) to ‘60 days’ shall, in the case of the employees described in paragraph (2), be deemed to read ‘120 days’.

“(2) The employees described in this paragraph are those employees of the Department of Defense who are to be separated, due to a reduction in force described in paragraph (1), effective on or after the last day of the 90-day period referred to in subsection (a)(2) [see Effective Date of 1992 Amendment note above] and before February 1, 2000.

“(3) Nothing in this subsection shall prevent the application of the amendment made by subsection (a) [amending this section] with respect to an employee if—

“(A) the preceding paragraphs of this subsection do not apply with respect to such employee; and

“(B) the amendment made by subsection (a) would otherwise apply with respect to such employee.

“(4) The Secretary of Defense shall prescribe such regulations as may be necessary to carry out this subsection.”

INDIAN PREFERENCE LAWS APPLICABLE TO BUREAU OF INDIAN AFFAIRS AND INDIAN HEALTH SERVICE POSITIONS

Applicability of Indian preference laws to Bureau of Indian Affairs and Indian Health Service positions for purposes of reduction-in-force procedures under subsec. (a) of this section, see section 472a(a) of Title 25, Indians.

EX. ORD. NO. 12828. DELEGATION OF CERTAIN PERSONNEL MANAGEMENT AUTHORITIES

Ex. Ord. No. 12828, Jan. 5, 1993, 58 F.R. 2965, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code and sections 3502(e), 4505a(e), and 5377(i)(2) of title 5 of the United States Code, it is hereby ordered as follows:

SECTION 1. The Office of Personnel Management is designated and empowered to exercise, without the approval, ratification, or other action of the President, the following:

(1) The authority of the President under 5 U.S.C. 3502(e), as added by section 4433 of Public Law 102-484, to shorten the period of advance notice otherwise required by law with respect to reductions in force.

(2) The authority of the President under 5 U.S.C. 4505a(e), as added by section 2(19) of Public Law 102-378, to permit performance-based cash awards to be paid to categories of employees who would not otherwise be eligible.

SEC. 2. The Director of the Office of Management and Budget is designated and empowered to exercise, without the approval, ratification, or other action of the President, the authority of the President under 5 U.S.C. 5377(i)(2), as added by section 2(34) of Public Law 102-378, to designate one or more categories of positions within an agency to be treated as critical positions within the meaning of 5 U.S.C. 5377(a)(2).

SEC. 3. This order shall be effective immediately.

GEORGE BUSH.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7512, 7521 of this title; title 10 section 1586; title 22 section 1438; title 25 section 472a; title 32 section 709.

§ 3503. Transfer of functions

(a) When a function is transferred from one agency to another, each competing employee in the function shall be transferred to the receiving agency for employment in a position for which he is qualified before the receiving agency may make an appointment from another source to that position.

(b) When one agency is replaced by another, each competing employee in the agency to be replaced shall be transferred to the replacing agency for employment in a position for which he is qualified before the replacing agency may make an appointment from another source to that position.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 429; Pub. L. 95-454, title III, §307(f), Oct. 13, 1978, 92 Stat. 1149; Pub. L. 96-54, §2(a)(18), Aug. 14, 1979, 93 Stat. 382.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 861(a) (3d proviso).	June 27, 1944, ch. 287, §12 (3d proviso), 58 Stat. 390.

In subsection (a), the words “a function” are substituted for “any or all of the functions”. The word “receiving” is substituted for “replacing” in the phrase “receiving agency” to avoid confusion with subsection (b).

In subsections (a) and (b), the word “first” in the phrase “shall first be transferred” is omitted as redundant in view of the subsequent limitation imposed by the words following “before”. The words “make an appointment from another source to that position” are substituted for “appoint additional employees from any other source for such position”.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1979—Subsecs. (a), (b). Pub. L. 96-54 substituted “competing employee” for “preference eligible employed”.

1978—Subsecs. (a), (b). Pub. L. 95-454 which directed the substitution of “competing employee” for “preference eligible employee” was impossible to execute literally because the text contained reference to “preference eligible employed”. See 1979 Amendment note above.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3595 of this title; title 10 section 1586; title 22 section 1438; title 24 section 225d.

§ 3504. Preference eligibles; retention; physical qualifications; waiver

(a) In determining qualifications of a preference eligible for retention in a position in the

competitive service, an Executive agency, or the government of the District of Columbia, the Office of Personnel Management or other examining agency shall waive—

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the Office or other examining agency, after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position.

(b) If an examining agency determines that, on the basis of evidence before it, a preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the position, the examining agency shall notify the Office of the determination and, at the same time, the examining agency shall notify the preference eligible of the reasons for the determination and of the right to respond, within 15 days of the date of the notification, to the Office. The Office shall require a demonstration by the appointing authority that the notification was timely sent to the preference eligible's last known address and shall, before the selection of any other person for the position, make a final determination on the physical ability of the preference eligible to perform the duties of the position, taking into account any additional information provided in the response. When the Office has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the appointing authority and the preference eligible. The appointing authority shall comply with the findings of the Office. The functions of the Office under this subsection may not be delegated.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 429; Pub. L. 95-454, title III, §307(g), title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1149, 1224.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 854 (1st 2 sentences, so much as relates to retention).	June 27, 1944, ch. 287, §5 (1st 2 sentences, so much as relates to retention), 58 Stat. 388.

The words “in the competitive service, an Executive agency, or the government of the District of Columbia” are added on authority of former sections 851, 858, and 869 which are carried into this title. The words “preference eligible” are substituted for “veteran”.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95-454 designated existing provisions as subsec. (a), substituted “Office of Personnel Management” for “Civil Service Commission” and “Office” for “Commission”, and added subsec. (b).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3501 of this title; title 22 section 1438.

[SUBCHAPTER II—REPEALED]

[§ 3551. Repealed. Pub. L. 103-353, §2(b)(2)(B), Oct. 13, 1994, 108 Stat. 3169]

Section, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 429; Pub. L. 90-491, §2, Aug. 17, 1968, 82 Stat. 791, provided that employee of Federal or District of Columbia government, ordered to active duty or to duty under sections 502-505 of Title 32, National Guard, as a Reserve of the armed forces or member of National Guard, was entitled, on release from duty within time limits specified in section 459(g) of Title 50, Appendix, War and National Defense, to be restored to position held by him when ordered to duty, and provided that a Reserve or member of National Guard who left position for which salary was disbursed by Secretary of the Senate or Clerk of the House of Representatives was entitled on release to be restored only under the provisions of section 459 of Title 50, Appendix.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to reemployments initiated on or after first day after 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103-353, set out as an Effective Date note under section 4301 of Title 38, Veterans' Benefits.

SUBCHAPTER III—REINSTATEMENT OR RESTORATION AFTER SUSPENSION OR REMOVAL FOR NATIONAL SECURITY

§ 3571. Reinstatement or restoration; individuals suspended or removed for national security

An individual suspended or removed under section 7532 of this title may be restored to duty in the discretion of the head of the agency concerned.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 429.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 22-1 (1st 31 words of 3d proviso), Aug. 26, 1950, ch. 803, §1 (1st 31 words of 3d proviso), 64 Stat. 477.

The words "suspended or removed under section 7532 of this title" are coextensive with and substituted for "whose employment is so suspended or terminated under the authority of said sections".

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SUBCHAPTER IV — REEMPLOYMENT AFTER SERVICE WITH AN INTERNATIONAL ORGANIZATION

§ 3581. Definitions

For the purpose of this subchapter—

- (1) "agency" means— (A) an Executive agency; (B) a military department; and (C) an employing authority in the legislative branch; (2) "employee" means an employee in or under an agency; (3) "international organization" means a public international organization or inter-

national-organization preparatory commission in which the Government of the United States participates;

(4) "transfer" means the change of position by an employee from an agency to an international organization; and

(5) "reemployment" means—

(A) the reemployment of an employee under section 3582(b) of this title; or

(B) the reemployment of a Congressional employee within 90 days from his separation from an international organization;

following a term of employment not extending beyond the period named by the head of the agency at the time of consent to transfer or, in the absence of a named period, not extending beyond the first 5 consecutive years, or any extension thereof, after entering the employ of the international organization.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 429; Pub. L. 91-175, pt. V, §502(b), Dec. 30, 1969, 83 Stat. 825; Pub. L. 94-183, §2(9), Dec. 31, 1975, 89 Stat. 1057.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 2331, Aug. 28, 1958, Pub. L. 85-795, §2, 72 Stat. 959.

In paragraphs (1)(A) and (B), the terms "Executive agency" and "military department" are coextensive with and substituted for "any department or agency in the executive branch of the United States Government including independent establishments and Government owned or controlled corporations" in view of the definitions in sections 105 and 102.

In paragraph (2), the word "employee" is substituted for "any civilian appointive officer or employee" in view of the definition of "employee" in section 2105. The words "in or under an agency" are substituted for "in or under the executive or the legislative branch of the United States Government".

The definition of "Congressional employee" in former section 2331(4) is omitted as unnecessary because the term "Congressional employee", defined for the purpose of this title in section 2107, is coextensive with the definition in former section 2331(4).

The definition of "Detail" in former section 2331(6) is omitted from this section as inappropriate but is carried into section 3343.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1975—Subsec. (5)(A). Pub. L. 94-183 substituted "3582(b)" for "3582(a)".

1969—Par. (5). Pub. L. 91-175 substituted "the first 5 consecutive years, or any extension thereof, after entering the employ of the international organization" for "the first 3 consecutive years after entering the employ of the international organization".

DELEGATION OF AUTHORITY

Authority of President to extend a transfer of an employee under this section delegated to Secretary of State, see section 3 of Ex. Ord. No. 11552, Aug. 24, 1970, 35 F.R. 13569, set out as a note under section 3584 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3343 of this title; title 26 section 3121; title 42 section 410.

§ 3582. Rights of transferring employees

(a) An employee serving under an appointment not limited to 1 year or less who transfers to an international organization with the consent of the head of his agency is entitled—

(1) to retain coverage, rights, and benefits under any system established by law for the retirement of employees, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the international organization are currently deposited in the system's fund or depository; and the period during which coverage, rights, and benefits are retained under this paragraph is deemed creditable service under the system, except that such service shall not be considered creditable service for the purpose of any retirement system for transferring personnel, if such service forms the basis, in whole or in part, for an annuity or pension under the retirement system of the international organization;

(2) to retain coverage, rights, and benefits under chapters 87 and 89 of this title, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the international organization are currently deposited in the Employees' Life Insurance Fund and the Employees' Health Benefits Fund, as applicable, and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapters 87 and 89 of this title;

(3) to retain coverage, rights, and benefits under subchapter I of chapter 81 of this title, and for this purpose his employment with the international organization is deemed employment by the United States, but if he or his dependents receive from the international organization a payment, allowance, gratuity, payment under an insurance policy for which the premium is wholly paid by the international organization, or other benefit of any kind on account of the same injury or death, the amount thereof, is credited against disability or death compensation, as the case may be, payable under subchapter I of chapter 81 of this title; and

(4) to elect to retain to his credit all accumulated and current accrued annual leave to which entitled at the time of transfer which would otherwise be liquidated by a lump-sum payment. On his request at any time before reemployment, he shall be paid for the annual leave retained. If he receives a lump-sum payment and is reemployed within 6 months after transfer, he shall refund to the agency the amount of the lump-sum payment. This paragraph does not operate to cause a forfeiture of retained annual leave following reemployment or to deprive an employee of a lump-sum payment to which he would otherwise be entitled.

(b) An employee entitled to the benefits of subsection (a) of this section is entitled to be reemployed within 30 days of his application for reemployment in his former position or a position of like seniority, status, and pay in the agency from which he transferred, if—

(1) he is separated from the international organization within 5 years, or any extension thereof, after entering on duty with the international organization or within such shorter period as may be named by the head of the agency at the time of consent to transfer; and

(2) he applies for reemployment not later than 90 days after the separation.

On reemployment, he is entitled to the rate of basic pay to which he would be entitled had he remained in the civil service. On reemployment, the agency shall restore his sick leave account, by credit or charge, to its status at the time of transfer. The period of separation caused by his employment with the international organization and the period necessary to effect reemployment are deemed creditable service for all appropriate civil service employment purposes. On reemployment, he is entitled to be paid, under such regulations as the President may prescribe and from appropriations or funds of the agency from which transferred, an amount equal to the difference between the pay, allowances, post differential, and other monetary benefits paid by the international organization and the pay, allowances, post differential, and other monetary benefits that would have been paid by the agency had he been detailed to the international organization under section 3343 of this title. Such a payment shall be made to an employee who is unable to exercise his reemployment right because of disability incurred while on transfer to an international organization under this subchapter and, in the case of any employee who dies while on such a transfer or during the period after separation from the international organization in which he is properly exercising or could exercise his reemployment right, in accordance with subchapter VIII of chapter 55 of this title. This subsection does not apply to a congressional employee nor may any payment provided for in the preceding two sentences of this subsection be based on a period of employment with an international organization occurring before the first day of the first pay period which begins after December 29, 1969.

(c) This section applies only with respect to so much of a period of employment with an international organization as does not exceed 5 years, or any extension thereof, or such shorter period named by the head of the agency at the time of consent to transfer, except that for retirement and insurance purposes this section continues to apply during the period after separation from the international organization in which—

(1) an employee, except a Congressional employee, is properly exercising or could exercise the reemployment right established by subsection (b) of this section; or

(2) a Congressional employee is effecting or could effect a reemployment.

During that reemployment period, the employee is deemed on leave without pay for retirement and insurance purposes.

(d) During the employee's period of service with the international organization, the agency from which the employee is transferred shall make contributions for retirement and insurance purposes from the appropriations or funds of that agency so long as contributions are made by the employee.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 430; Pub. L. 91-175, pt. V, § 502(c)-(f), Dec. 30, 1969, 83 Stat. 825, 826; Pub. L. 94-183, § 2(10), Dec. 31, 1975, 89 Stat. 1057.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2333 (less (c)).	Aug. 28, 1958, Pub. L. 85-795 § 4 (less (c)), 72 Stat. 960.

In subsection (a), the words "Notwithstanding the provisions of any law, Executive order, or regulation" are omitted as unnecessary. In paragraph (2), the words "an employee under chapter 87 of this title" are substituted for "an officer or employee of the United States". In paragraph (4), the words "under no circumstances" are omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1975—Subsec. (b). Pub. L. 94-183 substituted "after December 29, 1969" for "on or after the date of enactment of the Foreign Assistance Act of 1969" in last sentence.

1969—Subsec. (a). Pub. L. 91-175, § 502(c), inserted provision at end of cl. (1) excepting from creditable service, for the purpose of any retirement system, an agency employee who transfers to an international organization, if such service forms the basis for an annuity or pension under the retirement system of the international organization, and, in cl. (2), inserted references to chapter 89 and Employees' Health Benefits Fund.

Subsec. (b). Pub. L. 91-175, § 502(d), struck out "except a Congressional employee," in provisions preceding cl. (1), substituted "5 years or any extension thereof," for "3 years" in cl. (1), and, in provisions following cl. (2), inserted provision dealing with pay differentials to be received by former agency employee on reemployment with agency after service with international organization.

Subsec. (c). Pub. L. 91-175, § 502(e), substituted "5 years, or any extension thereof," for "3 years".

Subsec. (d). Pub. L. 91-175, § 502(f), made contributions for retirement and insurance purposes mandatory by the agency from which employee is transferred, during employee's period of service with international organization, so long as contributions are made by employee.

DELEGATION OF AUTHORITY

Authority of President under subsec. (b) of this section delegated to Office of Personnel Management, and authority to define and specify pay, allowances, etc., to be paid by the agency, delegated to Secretary of State, see section 3 of Ex. Ord. No. 11552, Aug. 24, 1970, 35 F.R. 13569, set out as a note under section 3584 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3581 of this title; title 22 section 6103; title 26 section 3121; title 42 section 410.

§ 3583. Computations

A computation under this subchapter before reemployment is made in the same manner as if the employee had received basic pay, or basic pay plus additional pay in the case of a Congressional employee, at the rate at which it would have been payable had the employee continued in the position in which he was serving at the time of transfer.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 431.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2333(c).	Aug. 28, 1958, Pub. L. 85-795, § 4(c), 72 Stat. 961.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 3584. Regulations

The President may prescribe regulations necessary to carry out this subchapter and section 3343 of this title and to protect and assure the retirement, insurance, leave, and reemployment rights and such other similar civil service employment rights as he finds appropriate. The regulations may provide for the exclusion of employees from the application of this subchapter and section 3343 of this title on the basis of the nature and type of employment including excepted appointments of a confidential or policy-determining character, or conditions pertaining to the employment including short-term appointments, seasonal or intermittent employment, and part-time employment.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 431.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2334.	Aug. 28, 1958, Pub. L. 85-795, § 5, 72 Stat. 961.

The words "civil service employment rights" are substituted for "Federal employment rights". The word "including" is substituted for "such as, but not limited to".

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

EXECUTIVE ORDER NO. 10804

Ex. Ord. No. 10804, Feb. 12, 1959, 24 F.R. 1147, which delegated to the United States Civil Service Commission the authority vested in the President by section 5 of the Federal Employees International Organization Service Act (72 Stat. 961) [now this section], was revoked by Ex. Ord. No. 11552, Aug. 24, 1970, 35 F.R. 13569, set out below.

EX. ORD. NO. 11552. PROVIDING FOR DETAILS AND TRANSFERS OF FEDERAL EMPLOYEES TO INTERNATIONAL ORGANIZATIONS

Ex. Ord. No. 11552, Aug. 24, 1970, 35 F.R. 13569, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by section 301 of title 3 and section 3584 of title 5 [this section], United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. *Leadership and coordination.* The Secretary of State shall provide leadership and coordination for the effort of the Federal Government to increase and improve its participation in international organizations through transfers and details of well-qualified Federal employees, and shall develop policies, procedures, and programs consistent with this order to advance and encourage such participation.

SECL. 2. *Federal agency cooperation.* Each agency in the executive branch of the Federal Government shall to the maximum extent feasible and with due regard to its manpower requirements assist and encourage details and transfers of employees to international orga-

nizations by observing the following policies and procedures:

(1) Vacancies in international organizations shall be brought to the notice of well-qualified agency employees whose abilities and levels of responsibility in the Federal service are commensurate with those required to fill such vacancies.

(2) Subject to prior approval of his agency, no leave shall be charged an employee who is absent for a maximum of three days for interview for a proposed detail or transfer at the formal request of an international organization of a Federal official; an agency may approve official travel for necessary travel within the United States in connection with such an interview.

(3) An agency, upon request of an appropriate authority, shall provide international organizations with detailed assessments of the technical or professional qualifications of individual employees being formally considered for details and transfers to specific positions.

(4) Upon return of an employee to his agency, the agency shall give due consideration to the employee's overall qualifications, including those which may have been acquired during his service with the international organization, in determining the position and grade in which he is reemployed.

SEC. 3. *Delegations.* (a) Except as otherwise provided in this order, there is hereby delegated to the Office of Personnel Management the authority vested in the President by sections 3582(b) and 3584 of title 5, United States Code.

(b) The following are hereby delegated to the Secretary of State:

(1) The authority vested in the President by sections 3343 and 3581 of title 5, United States Code, to determine whether it is in the national interest to extend a detail or transfer of an employee beyond five years.

(2) The authority vested in the President by section 3582(b) of title 5, United States Code, to define and specify "pay, allowances, post differential, and other monetary benefits" to be paid by the agency upon re-employment, disability, or death.

SEC. 4. *Revocation.* Executive Order No. 10804 of February 12, 1959, is hereby revoked.

SUBCHAPTER V—REMOVAL, REINSTATEMENT, AND GUARANTEED PLACEMENT IN THE SENIOR EXECUTIVE SERVICE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 38 section 7425.

§ 3591. Definitions

For the purpose of this subchapter, "agency", "Senior Executive Service position", "senior executive", "career appointee", "limited term appointee", "limited emergency appointee", "non-career appointee", and "general position" have the meanings set forth in section 3132(a) of this title.

(Added Pub. L. 95-454, title IV, § 404(b), Oct. 13, 1978, 92 Stat. 1165.)

EFFECTIVE DATE

Subchapter effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95-454, see section 415(a)(1), (b), of Pub. L. 95-454, set out as a note under section 3131 of this title.

§ 3592. Removal from the Senior Executive Service

(a) Except as provided in subsection (b) of this section, a career appointee may be removed from the Senior Executive Service to a civil service position outside of the Senior Executive Service—

(1) during the 1-year period of probation under section 3393(d) of this title,

(2) at any time for less than fully successful executive performance as determined under subchapter II of chapter 43 of this title, or

(3) if the career appointee is not recertified as a senior executive under section 3393a,

except that in the case of a removal under paragraph (2) of this subsection the career appointee shall, at least 15 days before the removal, be entitled, upon request, to an informal hearing before an official designated by the Merit Systems Protection Board at which the career appointee may appear and present arguments, but such hearing shall not give the career appointee the right to initiate an action with the Board under section 7701 of this title, nor need the removal action be delayed as a result of the granting of such hearing. In the case of a removal under paragraph (3) of this subsection, the career appointee shall have the right to appeal the removal from the Senior Executive Service to the Merit Systems Protection Board under section 7701.

(b)(1) Except as provided in paragraph (2) of this subsection, a career appointee in an agency may not be involuntarily removed—

(A) within 120 days after an appointment of the head of the agency; or

(B) within 120 days after the appointment in the agency of the career appointee's most immediate supervisor who—

(i) is a noncareer appointee; and

(ii) has the authority to remove the career appointee.

(2) Paragraph (1) of this subsection does not apply with respect to—

(A) any removal under section 4314(b)(3) of this title; or

(B) any disciplinary action initiated before an appointment referred to in paragraph (1) of this subsection.

(c) A limited emergency appointee, limited term appointee, or noncareer appointee may be removed from the service at any time.

(Added Pub. L. 95-454, title IV, § 404(b), Oct. 13, 1978, 92 Stat. 1165; amended Pub. L. 101-194, title V, § 506(b)(3), Nov. 30, 1989, 103 Stat. 1758.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101-194, § 506(b)(3)(D), inserted at end "In the case of a removal under paragraph (3) of this subsection, the career appointee shall have the right to appeal the removal from the Senior Executive Service to the Merit Systems Protection Board under section 7701."

Subsec. (a)(3). Pub. L. 101-194, § 506(b)(3)(A)-(C), added par. (3).

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-194 effective Jan. 1, 1991, see section 506(d) of Pub. L. 101-194, set out as a note under section 3151 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3151, 3393, 3393a, 7542 of this title; title 10 sections 1590, 1601; title 31 section 733.

§ 3593. Reinstatement in the Senior Executive Service

(a) A former career appointee may be reinstated, without regard to section 3393(b) and (c)

of this title, to any Senior Executive Service position for which the appointee is qualified if—

(1) the appointee has successfully completed the probationary period established under section 3393(d) of this title; and

(2) the appointee left the Senior Executive Service for reasons other than misconduct, neglect of duty, malfeasance, less than fully successful executive performance as determined under subchapter II of chapter 43 of this title, or failure to be recertified as a senior executive under section 3393a.

(b) A career appointee who is appointed by the President to any civil service position outside the Senior Executive Service and who leaves the position for reasons other than misconduct, neglect of duty, or malfeasance shall be entitled to be placed in the Senior Executive Service if the appointee applies to the Office of Personnel Management within 90 days after separation from the Presidential appointment.

(c)(1) A former career appointee shall be reinstated, without regard to section 3393(b) and (c) of this title, to any vacant Senior Executive Service position in an agency for which the appointee is qualified if—

(A) the individual was a career appointee on May 31, 1981;

(B) the appointee was removed from the Senior Executive Service under section 3595 of this title before October 1, 1984, due to a reduction in force in that agency;

(C) before the removal occurred, the appointee successfully completed the probationary period established under section 3393(d) of this title; and

(D) the appointee applies for that vacant position within one year after the Office receives certification regarding that appointee pursuant to section 3595(b)(3)(B) of this title.

(2) A career appointee is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title any determination by the agency that the appointee is not qualified for a position for which the appointee applies under paragraph (1) of this subsection.

(Added Pub. L. 95-454, title IV, § 404(b), Oct. 13, 1978, 92 Stat. 1166; amended Pub. L. 97-35, title XVII, § 1704(b), Aug. 13, 1981, 95 Stat. 757; Pub. L. 98-615, title III, § 303(a), Nov. 8, 1984, 98 Stat. 3217; Pub. L. 101-194, title V, § 506(b)(4), Nov. 30, 1989, 103 Stat. 1758.)

AMENDMENTS

1989—Subsec. (a)(2). Pub. L. 101-194 struck out “or” after “malfeasance,” and inserted “, or failure to be recertified as a senior executive under section 3393a” before period at end.

1984—Subsec. (c)(1)(B). Pub. L. 98-615 inserted “before October 1, 1984.”

1981—Subsec. (c). Pub. L. 97-35 added subsec. (c).

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-194 effective Jan. 1, 1991, see section 506(d) of Pub. L. 101-194, set out as a note under section 3151 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective following expiration of 90-day period beginning on Nov. 8, 1984, see section 307 of Pub. L. 98-615, set out as a note under section 3393 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective June 1, 1981, with certain exceptions and conditions, see section 1704(e) of Pub. L. 97-35, set out as an Effective Date note under section 3595 of this title.

§ 3594. Guaranteed placement in other personnel systems

(a) A career appointee who was appointed from a civil service position held under a career or career-conditional appointment (or an appointment of equivalent tenure, as determined by the Office of Personnel Management) and who, for reasons other than misconduct, neglect of duty, or malfeasance, is removed from the Senior Executive Service during the probationary period under section 3393(d) of this title, shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

(b) A career appointee who has completed the probationary period under section 3393(d) of this title, and who—

(1) is removed from the Senior Executive Service for less than fully successful executive performance as determined under subchapter II of chapter 43 of this title;

(2) is removed from the Senior Executive Service under paragraph (4) or (5) of section 3595(b) of this title; or

(3) is removed from the Senior Executive Service for failure to be recertified under section 3393a;

shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

(c)(1) For purposes of subsections (a) and (b) of this section—

(A) the position in which any career appointee is placed under such subsections shall be a continuing position at GS-15 of the General Schedule or classified above GS-15 pursuant to section 5108, or an equivalent position, and, in the case of a career appointee referred to in subsection (a) of this section, the career appointee shall be entitled to an appointment of a tenure equivalent to the tenure of the appointment held in the position from which the career appointee was appointed;

(B) any career appointee placed under subsection (a) or (b) of this section shall be entitled to receive basic pay at the highest of—

(i) the rate of basic pay in effect for the position in which placed;

(ii) the rate of basic pay in effect at the time of the placement for the position the career appointee held in the civil service immediately before being appointed to the Senior Executive Service; or

(iii) the rate of basic pay in effect for the career appointee immediately before being placed under subsection (a) or (b) of this section; and

(C) the placement of any career appointee under subsection (a) or (b) of this section may not be made to a position which would cause the separation or reduction in grade of any other employee.

(2) An employee who is receiving basic pay under paragraph (1)(B)(ii) or (iii) of this sub-

section is entitled to have the basic pay rate of the employee increased by 50 percent of the amount of each increase in the maximum rate of basic pay for the grade of the position in which the employee is placed under subsection (a) or (b) of this section until the rate is equal to the rate in effect under paragraph (1)(B)(i) of this subsection for the position in which the employee is placed.

(Added Pub. L. 95-454, title IV, § 404(b), Oct. 13, 1978, 92 Stat. 1166; amended Pub. L. 98-615, title III, § 303(b), Nov. 8, 1984, 98 Stat. 3217; Pub. L. 101-194, title V, § 506(b)(5), Nov. 30, 1989, 103 Stat. 1758; Pub. L. 101-509, title V, § 529 [title I, § 101(b)(9)(E)], Nov. 5, 1990, 104 Stat. 1427, 1441; Pub. L. 102-378, § 2(16), Oct. 2, 1992, 106 Stat. 1347.)

REFERENCES IN TEXT

GS-15 of the General Schedule, referred to in subsec. (c)(1)(A), is set out under section 5332 of this title.

AMENDMENTS

1992—Subsec. (c)(1)(A). Pub. L. 102-378 substituted “section 5108,” for “section 5108,.”

1990—Subsec. (c)(1)(A). Pub. L. 101-509 substituted “at GS-15 of the General Schedule or classified above GS-15 pursuant to section 5108,” for “at GS-15 or above of the General Schedule”.

1989—Subsec. (b)(3). Pub. L. 101-194 added par. (3).

1984—Subsec. (b). Pub. L. 98-615 inserted provision relating to career appointees removed from the Senior Executive Service under section 3595(b)(4) or (5) of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101-509, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-194 effective Jan. 1, 1991, see section 506(d) of Pub. L. 101-194, set out as a note under section 3151 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective following expiration of 90-day period beginning on Nov. 8, 1984, see section 307 of Pub. L. 98-615, set out as a note under section 3393 of this title.

§ 3595. Reduction in force in the Senior Executive Service

(a) An agency shall establish competitive procedures for determining who shall be removed from the Senior Executive Service in any reduction in force of career appointees within that agency. The competitive procedures shall be designed to assure that such determinations are primarily on the basis of performance, as determined under subchapter II of chapter 43 of this title.

(b)(1) This subsection applies to any career appointee who has successfully completed the probationary period prescribed under section 3393(d) of this title.

(2) Except as provided in paragraphs (4) and (5), a career appointee may not be removed from the Senior Executive Service due to a reduction in force within an agency.

(3) A career appointee who, but for this subsection, would be removed from the Senior Exec-

utive Service due to a reduction in force within an agency—

(A) is entitled to be assigned by the head of that agency to a vacant Senior Executive Service position for which the career appointee is qualified; or

(B) if the agency head certifies, in writing, to the Office of Personnel Management that no such position is available in the agency, shall be placed by the Office in any agency in any vacant Senior Executive Service position unless the head of that agency determines that the career appointee is not qualified for that position.

The Office of Personnel Management shall take all reasonable steps to place a career appointee under subparagraph (B) and may require any agency to take any action which the Office considers necessary to carry out any such placement.

(4) A career appointee who is not assigned under paragraph (3)(A) may be removed from the Senior Executive Service due to a reduction in force if the career appointee declines a reasonable offer for placement in a Senior Executive Service position under paragraph (3)(B).

(5) A career appointee who is not assigned under paragraph (3)(A) may be removed from the Senior Executive Service due to a reduction in force if the career appointee is not placed in another Senior Executive Service position under paragraph (3)(B) within 45 days after the Office receives certification regarding that appointee under paragraph (3)(B).

(c) A career appointee is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title whether the reduction in force complies with the competitive procedures required under subsection (a).

(d) For purposes of this section, “reduction in force” includes the elimination or modification of a position due to a reorganization, due to a lack of funds or curtailment of work, or due to any other factor.

(e) The Office shall prescribe regulations under which the rights accorded to a career appointee in the event of a transfer of function are comparable to the rights accorded to a competing employee under section 3503 of this title in the event of such a transfer.

(Added Pub. L. 97-35, title XVII, § 1704(a)(1), Aug. 13, 1981, 95 Stat. 756; amended Pub. L. 97-346, § 5(a), (b), Oct. 15, 1982, 96 Stat. 1650; Pub. L. 98-615, title III, §§ 303(c), (d), 304(b), Nov. 8, 1984, 98 Stat. 3218, 3219.)

PRIOR PROVISIONS

A prior section 3595, added Pub. L. 95-454, title IV, § 404(b), Oct. 13, 1978, 92 Stat. 1167, which related to prescribing regulations, was renumbered section 3596 by Pub. L. 97-35, title XVII, § 1704(a)(1), Aug. 13, 1981, 95 Stat. 756.

AMENDMENTS

1984—Subsec. (b)(3)(B). Pub. L. 98-615, § 303(c)(1), struck out the designation “(i)” before provisions relating to placement in any agency in any vacant Executive Service position, and struck out former cl. (ii), which had related to detailing by the Office of Personnel Management to any vacant Senior Executive Service position for which the Office deemed the employee

to be qualified in any agency for a period not to exceed 60 days, and placement in such position by the Office after the period of such detail, unless the head of the agency determined that the career appointee was not qualified for such position.

Subsec. (b)(4). Pub. L. 98-615, §303(c)(2), struck out “and the civil service” after “removed from the Senior Executive Service”, struck out the designation “(A)” before “the career appointee declines”, and substituted a period for the semicolon and “or” at the end thereof. Former subpar. (B) redesignated par. (5).

Subsec. (b)(5). Pub. L. 98-615, §303(c)(2), redesignated former par. (4)(B) as (5), substituted “A career appointee who is not assigned under paragraph (3)(A) may be removed from the Senior Executive Service due to a reduction in force if” for “subject to paragraph (5).”, substituted “45 days” for “120 days”, and struck out former par. (5), which had provided that persons who were career appointees as of May 31, 1981, could only be removed from the Senior Executive Service and the civil service due to a reduction in force after the 120-day period if the Director of the Office of Personnel Management certified to certain Congressional committees that the Office had taken all reasonable steps to place the appointee but had been unable to do so due to the appointee’s highly specialized skills and experience.

Subsec. (c). Pub. L. 98-615, §303(d), struck out the designation “(1)” before “whether the reduction”, and struck out pars. (2) and (3), which had provided, respectively, the right to appeal any removal under subsec. (b)(4)(A) and the right to appeal any nonappointment under subsec. (b)(3), and, in the event of such nonappointment, whether the Office of Personnel Management took all reasonable steps to achieve such placement and whether the agency correctly decided under subsec. (b)(3)(B) that the career appointee was not qualified for such placement.

Subsec. (e). Pub. L. 98-615, §304(b), added subsec. (e). 1982—Subsec. (b)(3)(B). Pub. L. 97-346, §5(a), designated as cl. (i) existing provisions relating to placement in any agency in any vacant Executive Service position, and added cl. (ii).

Subsec. (c)(3). Pub. L. 97-346, §5(b), designated as subpar. (A) existing provisions relating to taking of all reasonable steps by Office of Personnel Management, and added subpar. (B).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 303(c), (d) of Pub. L. 98-615 effective following expiration of 90-day period beginning on Nov. 8, 1984, and amendment by section 304(b) of Pub. L. 98-615 effective Nov. 8, 1984, see section 307 of Pub. L. 98-615, set out as a note under section 3393 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 5(c) of Pub. L. 97-346 provided that:
“(1) Except as provided in paragraph (2), the amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 15, 1982].

“(2) The amendments made by this section [amending this section] shall apply to an individual who is a career appointee on or after September 30, 1982, except that any individual who is a career appointee on September 30, 1982, and who is described in section 3595(b)(3) of title 5, United States Code, may not be removed before December 15, 1982, due to a reduction in force, unless the removal is under section 3595(b)(4)(A) of such title on the grounds the individual declined a reasonable placement offer.”

EFFECTIVE DATE

Section 1704(e) of Pub. L. 97-35 provided that:
“(1) Subject to paragraph (2), the amendments made by this section [enacting this section, redesignating former section 3595 as section 3596 of this title, and amending sections 3393, 3593, 7542, and 7543 of this title] shall be effective as of June 1, 1981.

“(2)(A) Except as provided in subparagraph (B), the amendments made by this section shall apply to any career appointee removed from the civil service after May 31, 1981, and before the date of the enactment of this section [Aug. 13, 1981] if, not later than 14 days after such date of enactment, application therefor is made to the Office of Personnel Management and to the head of the Agency in which the appointee was employed.

“(B) The provisions of section 3595(a), as added by subsection (a)(1), shall take effect on the date of the enactment of this Act [Aug. 13, 1981].

“(3) The effectiveness of the amendments made by this section shall be subject to section 415(b) of the Civil Service Reform Act of 1978 [Pub. L. 95-454, title IV, Oct. 13, 1978, 92 Stat. 1154] (5 U.S.C. 3131 note) to the same extent and manner as the amendments made by title IV of that Act.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3151, 3393, 3593, 3594, 7542 of this title; title 10 section 1590.

§ 3595a. Furlough in the Senior Executive Service

(a) For the purposes of this section, “furlough” means the placement of a senior executive in a temporary status in which the senior executive has no duties and is not paid when the placement in such status is by reason of insufficient work or funds or for other nondisciplinary reasons.

(b) An agency may furlough a career appointee only in accordance with regulations issued by the Office of Personnel Management.

(c) A career appointee who is furloughed is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

(Added Pub. L. 98-615, title III, §306(c)(1), Nov. 8, 1984, 98 Stat. 3220.)

EFFECTIVE DATE

Section effective following expiration of 90-day period beginning on Nov. 8, 1984, see section 307 of Pub. L. 98-615, set out as an Effective Date of 1984 Amendment note under section 3393 of this title.

§ 3596. Regulations

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.

(Added Pub. L. 95-454, title IV, §404(b), Oct. 13, 1978, 92 Stat. 1167, §3595; renumbered §3596, Pub. L. 97-35, title XVII, §1704(a)(1), Aug. 13, 1981, 95 Stat. 756.)

AMENDMENTS

1981—Pub. L. 97-35 renumbered section 3596 of this title as this section.

SUBCHAPTER VI—REEMPLOYMENT FOLLOWING LIMITED APPOINTMENT IN THE FOREIGN SERVICE

§ 3597. Reemployment following limited appointment in the Foreign Service

An employee of any agency who accepts, with the consent of the head of that agency, a limited appointment in the Foreign Service under section 309 of the Foreign Service Act of 1980 is entitled, upon the expiration of that appointment, to be reemployed in that employee’s former po-

sition or in a corresponding or higher position in that agency. Upon reemployment under this section, an employee shall be entitled to any within-grade increases in pay which the employee would have received if the employee had remained in the former position in the agency.

(Added Pub. L. 96-465, title II, §2301(a), Oct. 17, 1980, 94 Stat. 2164.)

REFERENCES IN TEXT

Section 309 of the Foreign Service Act of 1980, referred to in text, is classified to section 3949 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE

Section effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96-465, set out as a note under section 3901 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 3950.

Subpart C—Employee Performance

CHAPTER 41—TRAINING

Sec.	
4101.	Definitions.
4102.	Exceptions; Presidential authority.
4103.	Establishment of training programs.
4104.	Government facilities; use of.
4105.	Non-Government facilities; use of.
[4106.]	Repealed.]
4107.	Restriction on degree training.
4108.	Employee agreements; service after training.
4109.	Expenses of training.
4110.	Expenses of attendance at meetings.
4111.	Acceptance of contributions, awards, and other payments.
4112.	Absorption of costs within funds available.
[4113.]	Repealed.]
[4114.]	Repealed.]
4115.	Collection of training information.
4116.	Training program assistance.
4117.	Administration.
4118.	Regulations.
4119.	Training for employees under the Office of the Architect of the Capitol and the Botanic Garden.

AMENDMENTS

1995—Pub. L. 104-66, title II, §2181(c)(2), Dec. 21, 1995, 109 Stat. 732, struck out item 4113 “Agency review of training needs; annual program reports”.

1994—Pub. L. 103-226, §2(b)(2), Mar. 30, 1994, 108 Stat. 112, struck out item 4106 “Non-Government facilities; amount of training limited”, substituted “Restriction on degree training” for “Non-Government facilities; restrictions” in item 4107, and struck out item 4114 “Non-Government facilities; review of training programs”.

1982—Pub. L. 97-346, §1(b), Oct. 15, 1982, 96 Stat. 1647, added item 4119.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 3381 of this title; title 18 section 209; title 26 section 4941; title 38 section 3681.

§ 4101. Definitions

For the purpose of this chapter—

(1) “agency”, subject to section 4102 of this title, means—

- (A) an Executive department;
- (B) an independent establishment;
- (C) a Government corporation subject to chapter 91 of title 31;

- (D) the Library of Congress;
- (E) the Government Printing Office; and
- (F) the government of the District of Columbia;

(2) “employee”, subject to section 4102 of this title, means—

- (A) an individual employed in or under an agency; and
- (B) a commissioned officer of the Environmental Science Services Administration;

(3) “Government” means the Government of the United States and the government of the District of Columbia;

(4) “training” means the process of providing for and making available to an employee, and placing or enrolling the employee in, a planned, prepared, and coordinated program, course, curriculum, subject, system, or routine of instruction or education, in scientific, professional, technical, mechanical, trade, clerical, fiscal, administrative, or other fields which will improve individual and organizational performance and assist in achieving the agency’s mission and performance goals;

(5) “Government facility” means property owned or substantially controlled by the Government and the services of any civilian and military personnel of the Government; and

(6) “non-Government facility” means—

(A) the government of a State or of a territory or possession of the United States including the Commonwealth of Puerto Rico, and an interstate governmental organization, or a unit, subdivision, or instrumentality of any of the foregoing;

(B) a foreign government or international organization, or instrumentality of either, which is designated by the President as eligible to provide training under this chapter;

(C) a medical, scientific, technical, educational, research, or professional institution, foundation, or organization;

(D) a business, commercial, or industrial firm, corporation, partnership, proprietorship, or other organization;

(E) individuals other than civilian or military personnel of the Government; and

(F) the services and property of any of the foregoing furnishing the training.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 432; Pub. L. 90-206, title II, §224(a), Dec. 16, 1967, 81 Stat. 642; Pub. L. 97-258, §3(a)(8), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 103-226, §2(a)(1), Mar. 30, 1994, 108 Stat. 111.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2302.	July 7, 1958, Pub. L. 85-507, §3, 72 Stat. 328.

In paragraph (1), the word “agency” is substituted for “department”. Reference to the “General Accounting Office” is omitted as included in “independent establishment” because of the definition in section 104.

In paragraph (2)(B), the words “in the Department of Commerce” are omitted as unnecessary.

In paragraph (6)(C), the word “agency” is omitted as unnecessary and to avoid confusion with the word “agency” defined by paragraph (1).

In paragraph (6)(E), the words “individuals other than civilian or military personnel of the Government”